Supreme Court, U.S.

In the

Supreme Court of the United States

October Term, 1970

No. 1595

LARRY L. STEVENS and GLORIA STEVENS, his wife; and WILLIAM G. BOYD and JANE DOE BOYD, his wife,
Petitioners,

v.

J. LAWRENCE BUCKLEY and ALMA E. BUCKLEY, his wife; and ALMA KATHLEEN OGLE, as Executrix of the estate of J. LAWRENCE BUCKLEY; and ROBERT J. CADRANELL and CARMEN CADRANELL, his wife; and ROBERT L. CADRANELL and JANE DOE CADRANELL, his wife; and ROY W. MYERS and VIRGINIA MYERS, his wife,
Respondents.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON (DIVISION No. 1, SEATTLE, WASHINGTON)

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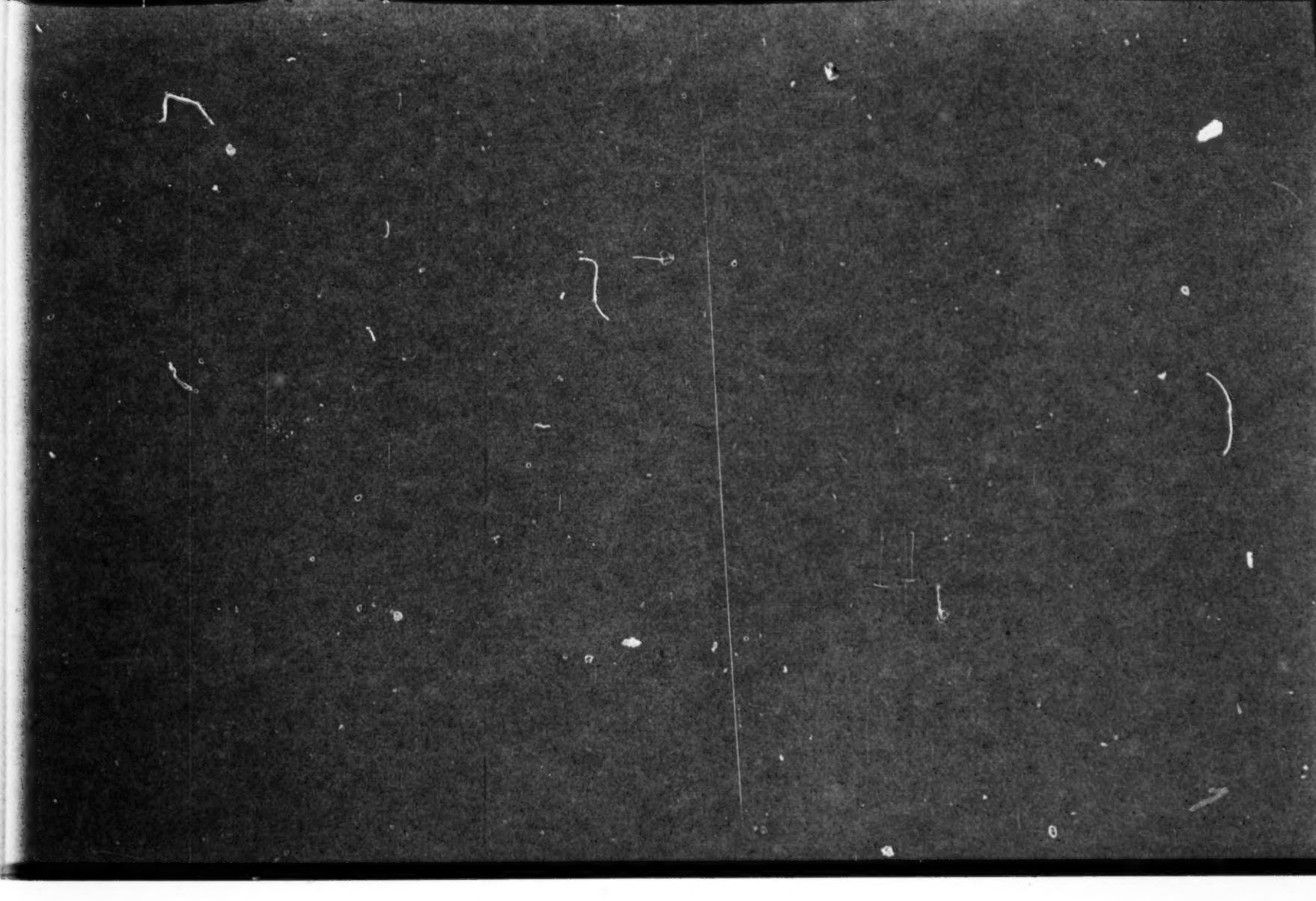

SUBJECT INDEX

	Page
Jurisdiction	2
Questions Presented	3
Statement of the Case	4
Conclusion	4

TABLES OF AUTHORITY

Constitutional Provisions

United States Constitution, Article I, Section 10..... 2

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The respondents, Robert J. and Carmen Cadranell, his wife, are hereby responding to the Petition for a Writ of Certiorari to the Court of Appeals of the State of Washington, Division No. 1, Seattle, Washington for the purpose of clarifying the issues which the petitioners raise in their Petition.

JURISDICTION

Petitioners allege that they are invoking the jurisdiction of this court under the United States Constitution, Article I, Section 10, forbidding a state from impairing the obligation of a contract. The respondents refer to the full text of the Opinion of the Court of Appeals of the State of Washington set forth in the Appendix to the Petition at page A-1. A reading of this opinion which is very brief clearly indicates that the court's decision does not impair the obligation of any contract but simply applies the usury statute of the State of Washington to the facts found to exist by the trial court which the Court of Appeals indicates were supported by substantial evidence.

The petitioners further state that "under the usury statute of the State of Washington the burden of *disproving usury* is placed upon the *lender.*" Neither the opinion of the Court of Appeals referred to above nor any ruling or decision of any kind either by the trial court or the Court of Appeals indicates that the burden of disproving usury is placed upon the lender. The respondents properly pleaded the defense of usury and presented the evidence considered by the trial court to be sufficient to carry the burden of proof that there was a charge by the lender of a "finder's fee" which was in fact an additional interest charge by the petitioners for their loan of money to the respondents and the Court of Appeals after reviewing the record of all the evidence states: "the record further supports the finding of fact that it was an additional charge for a loan of money, and therefore usury." Page A-3.

QUESTIONS PRESENTED

Petitioners set forth two questions as follows:

> "1. Are the petitioners protected against a judicial decision which so construes a state usury statute that it impairs a contract by destroying its remedy?"

Again the respondents refer to the decision of the Court of Appeals which simply affirms the trial court's finding of fact that there was an additional charge for money loaned by the petitioners in excess of the rate allowed by the usury law of the State of Washington. The remedy under the contract is destroyed not by a court decision but by the fact that the lender charged more than the allowable rate of interest under the Washington Usury Law.

> "2. Does a state court decision, placing the burden of proof upon a lender of monies to disprove usury, impair rights under a private contract?"

This question is actually not presented by the circumstances now before this court inasmuch as neither the decision of the trial court nor the decision of the Court of Appeals for the State of Washington nor any other ruling in this matter has placed the burden of proof upon the lender of monies to disprove usury. No issue was ever raised before the court as to who had the burden of proof but in any event it is obvious from the decisions of both the trial court and the Court of Appeals that the evidence presented by the borrower was sufficient to establish usury. The borrower presented substantial evidence including documents prepared by the petitioners to prove that there was a charge made to the borrowers designated by the lenders as a "finder's fee" and from all the evidence presented in the case the trial court was satisfied that this was in fact an additional charge for the loan of money by the lenders to the borrowers.

STATEMENT OF THE CASE

Petitioners state at the top of page 4 of their Petition that: "It was uncontroverted that a charge of 10% or $2200 was fair and reasonable for the work done by appellants." This is misleading inasmuch as there was no concession or agreement of any kind on the part of the respondents, the borrowers, that such a charge was a fair and reasonable charge for work done by appellant. And the Court of Appeals in its decision on page A-3 of the Petition states:

> "The determination of this issue is a question of fact. Although the record indicates appellants went to considerable effort to satisfy themselves there was good security for the loan they were making, the evidence further shows appellants, in addition to the finder's fee, charged the Cadranells specifically for a credit report, title insurance premiums, attorney's fees and an escrow fee. The evidence does not compel us to find, as a matter of law, that the money charged as a finder's fee was strictly for services rendered, was reasonable and was not a commission for making the loan or a payment for use of money."

CONCLUSION

As pointed out above, it should be obvious from a reading of the decision of the Court of Appeals of the State of Washington and if the Findings of Fact and Conclusions of Law and Judgment of the trial court and the documentary evidence submitted to the trial court is available that would also definitely show that there was substantial evidence that the lenders made a charge in excess of the rate allowed by the Washington Usury Statute and the trial court simply decided as a Finding of Fact that there was in fact such a charge and the Court of Appeals merely

confirmed the trial court's findings after reviewing the matter. This situation does not give rise to any issue about impairing rights under a contract or destroying a remedy under the contract, nor does it give rise to any shifting of the burden to the lender to disprove usury. The Petition for a Writ of Certiorari to the Court of Appeals of the State of Washington should be denied.

Respectfully submitted,

GEORGE S. COOK
Counsel for Respondents,
Robert J. Cadranell and
Carmen Cadranell, his wife.